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Supreme Court of the United States

OCTOBER TERM, 1927.

WILLIAM H. BLODGETT, Tax Commissioner of the State of Connecticut,
Petitioner,
vs.
ARTHUR SILBERMAN, CHARLES MOEBIUS, JOSEPH PLAUT, *et al.*, *Executors,*
on Writ of Certiorari to the Superior Court of Fairfield County, State of Connecticut.

No. 190

ARTHUR SILBERMAN, CHARLES MOEBIUS, JOSEPH PLAUT, *et al.*, *Executors,*
etc., Plaintiffs-in-Error,
WILLIAM H. BLODGETT, Tax Commissioner of the State of Connecticut,
in Error to the Superior Court of the State of Connecticut.

No. 191

MOTION TO ADVANCE CASE FOR ARGUMENT.

BENJAMIN W. ALLING,
Attorney-General of Connecticut,
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Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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in Error to the Superior Court of the State of Connecticut.

No. 191

MOTION TO ADVANCE CASE FOR ARGUMENT.

WILLIAM H. BLODGETT, Tax Commissioner of the State of Connecticut, petitioner in Case No. 190 above, and de-

fendant-in-error in Case No. 191 above, by his counsel respectfully moves this Honorable Court that the above-entitled cases be advanced for argument to an early date in the term of this Court which opens on October 3, 1927.

These cases are of extreme public importance as they necessarily involve a determination of the power of the State of Connecticut, and of all of the States, to impose a tax upon the succession to certain classes of property of resident domiciled citizens.

Statement of the Case.

ROBERT B. HIRSCH died on September 23, 1924, domiciled at Stamford, Connecticut, leaving a will and two codicils thereto, duly executed in accordance with the law of Connecticut. Among the property owned by the decedent at the time of his death were:

(a) Interest in the partnership of William Openhym & Sons, organized and doing business in New York City under the New York Limited Partnership Act, appraised at $1,687,245.34;

(b) Shares of Stock in New York, New Jersey and Canadian corporations, appraised at $277,864.25; the certificates of which were at the time of his death in in New York City;

(c) Bonds and Treasury Certificates of Indebtedness of the United States, payable to bearer, appraised at $615,121.17; said bonds and certificates being at the time of his death in New York City;

(d) A Savings Bank account in a New York Bank, appraised at $108.56;

(e) A life insurance policy in the Mutual Life Insurance Company of New York, payable to the Estate; said policy being at the time of his death in New York City appraised at $14,820.11; and

(f) Cash in New York City, consisting of bank notes and coin, appraised at $287.48.

The will and codicils were first offered for probate in the Surrogates' Court of New York County, New York, and letters testamentary were issued thereon to the above-named executors. A Transfer Tax was levied and paid to the State of New York only upon the transfer of the stock in the New York corporation and of the interest in the New York partnership of William Openhym & Sons.

Thereafter an exemplified copy of the will and codicils, and of the record of the proceedings establishing the same in the Surrogate's Court of New York County, New York, was exhibited to the Court of Probate for the District of Stamford, Connecticut, and letters testamentary were issued to the above-named executors. They filed in the Court of Probate for the District of Stamford, and with the Tax Commissioner of Connecticut a statement under oath, covering the property of the estate and the claimed deductions therefor, for the purpose of determining the succession tax due the State of Connecticut.

The Tax Commissioner of the State of Connecticut computed the tax due the State of Connecticut under the provisions of Section 1 of Chapter 190 of the Acts of 1923, which provided:

> "Sec. 1. All property, and any interest therein, owned by a resident of this State at the time of decease * * * shall be subject to the tax here prescribed."

His computation was confirmed by the Probate Court for the District of Stamford, Fairfield County, Connecticut. The tax so imposed is in accordance with the terms of the taxing statute and was imposed upon the transfer of all of the above enumerated property. The Executors appealed to the Superior Court of Fairfield County, Connecticut, alleging that the State of Connecticut had no power under the Fourteenth Amendment to the Federal Constitution to impose such a tax and that the imposition of the tax denied full faith and credit to the laws of the State of New York. The Superior Court of Fairfield County, in accordance with mandatory advice from the Supreme Court of Errors of Connecticut, adjudged that the tax was in accordance with the statute, that the imposition of the tax did not deny full faith and credit to the laws of the State of New York and that the tax was constitutionally imposed upon the succession to all of the above described property, except upon the succession to the United States Liberty Bonds and Certificates of Indebtedness and the cash, being the property described in paragraphs (c) and (f) above. As to this property, the Superior Court adjudged, in accordance with the mandatory advice of the Supreme Court of Errors of the State of Connecticut, that the State of Connecticut had no power, under the Fourteenth Amendment to the Federal Constitution, to impose a succession tax upon it.

The Executors of the Estate of Robert B. Hirsch have by writ of error brought for review by this Court the judgment of the Superior Court of Fairfield County, Connecticut, in so far as it relates to the imposition of a succession tax upon the interest in the partnership, the shares of stock, the savings bank account and the life insurance policy. The Tax Commissioner, on behalf of the State of Connecticut, has been granted a writ of certiorari to review that part of

the judgment which held that the State of Connecticut had no power to impose a tax upon the succession to the United States Bonds, Certificates of Indebtedness and cash.

Reasons for Advancement.

These cases are of fundamental importance to the inheritance taxing authorities of the several States. The laws of almost every State impose a tax upon the succession to or the transfer of similar classes of property of resident citizens. The principles of law herein involved necessarily have to be applied in the settlement of many estates and uncertainty and confusion now exists as to the extent of the power of the States to levy a succession tax upon classes of property of its domiciled resident citizens, similar to those involved in this case.

Other cases in the State of Connecticut involving the imposition of a succession tax upon similar classes of property are now pending and must necessarily be held open until these cases can be determined.

WHEREFORE, it is respectfully moved that the above-entitled cases be advanced for argument to an early date in the October 1927 Term of this Honorable Court.

Respectfully submitted,

BENJAMIN W. ALLING,
Attorney-General of Connecticut,

FARWELL KNAPP,
Inheritance Tax Attorney of Connecticut.

CHARLES E. HUGHES,
LUCIUS F. ROBINSON,
Counsel.

ARTHUR SILBERMAN, CHARLES MOEBIUS, JOSEPH PLAUT, FRANKLIN C. LEWIS and ABRAHAM L. GUTMAN, Executors of the Will of Robert B. Hirsch, deceased, plaintiffs-in-error in Case #191 above and respondents in Case #190 above, by their counsel, respectfully join in the foregoing motion to advance these cases for early argument.

From inquiries made by the attorneys representing other large estates now in the process of settlement, we believe that the decision of these cases is of general importance in the determination of inheritance, succession and transfer taxes in a large number of cases and under the laws of substantially every State in the Union, and that the final settlement of these other estates cannot be had until the determination of these cases. The interest expressed in them is wide-spread and their early decision will be of benefit in a considerable number of cases now while estates and the taxes thereon are still unsettled.

So far as this estate is concerned, any tax which may eventually be found due to the State of Connecticut is payable by the terms of the decedent's will out of the residuary estate, and this entire residuary estate was left in trust to twelve named trustees to apply the net income therefrom to the free education of poor and deserving children in the Ethical Culture School now maintained in the City of New York, and to the free education, maintenance and support of poor and deserving young men and women who may desire to fit themselves for the career of teachers and who shall have displayed to the satisfaction of the directors of the Society for Ethical Culture sufficient capacity for such career. Pending the determination of the issues involved in these cases, the Executors are unable to

make final payment to the said trustees. The tax claimed by the State of Connecticut amounts with interest to over $200,000.

Respectfully submitted,

ABRAHAM L. GUTMAN,
KENNETH DAYTON,
Attorneys for Executors.

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IN THE

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BRIEF FOR WILLIAM H. BLODGETT, TAX COMMISSIONER OF THE STATE OF CONNECTICUT, PETITIONER AND DEFENDANT-IN-ERROR.

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BRIEF FOR WILLIAM H. BLODGETT, TAX COMMISSIONER OF THE STATE OF CONNECTICUT, PETITIONER AND DEFENDANT-IN-ERROR.

These cases involve the jurisdiction of the State of Connecticut under the Fourteenth Amendment to the Constitu-

County entered in accordance with the mandatory advice of the Supreme Court of Errors was that the imposition of the succession tax upon these items of property was a taking of property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States (R. 78-81). That the basis of this judgment was the determination of the Federal question clearly appears from the opinion of the Supreme Court of Errors of Connecticut in which Chief Justice Wheeler said (R. 75):

> "The same considerations which converted state and municipal securities into tangible personal property necessarily operate to convert United States bonds and treasury certificates into tangible personal property. As such under the Frick case they are subject to a transfer tax in New York where they were found and nowhere else. Likewise the cash in New York was subject to a transfer tax there and nowhere else."

(3) Jurisdiction of this court is invoked under section 237(b) of the Judiciary Code (as amended by the Act of February 13, 1925, Chapter 229), being section 344 of Title 28 of the United States Code.

(4) The following cases are believed to sustain the jurisdiction of this court:

Carpenter v. *Pennsylvania*, 17 How. 456;
Kirtland v. *Hotchkiss*, 100 U. S. 491;
Keeney v. *New York*, 222 U. S. 525;
Bullen v. *Wisconsin*, 240 U. S. 625;
Rhode Island Hospital Trust Co. v. *Doughton*, 270 U. S. 69;
Public Utilities Commission of Rhode Island v. *Attleboro Steam & Electric Company*, 273 U. S. 83.

Statement of Facts.

Robert B. Hirsch died on September 23, 1924. at Stamford, Connecticut, leaving a will and two codicils executed in accordance with the law of Connecticut. At the time of his death he was domiciled in and a resident of Stamford within the State of Connecticut (R. 6). The property owned by the decedent at the time of his death was:

(a) Bonds and Treasury Certificates of Indebtedness of the United States, payable to bearer, appraised at $615,121.17, said bonds and certificates being at the time of his death in New York City;

(b) Cash in New York City, consisting of bank notes and coin, appraised at $287.48;

(c) Interest as a general partner in the limited partnership of William Openhym & Sons, organized and doing business in New York City under the New York Partnership Law, appraised at $1,687,245.34;

(d) Shares of stock in New York, New Jersey and Canadian corporations, appraised at $277,864.25, the certificates of which were at the time of his death in New York City;

(e) A savings bank account in a New York bank, appraised at $108.56;

(f) A life insurance policy in the Mutual Life Insurance Company of New York, payable to the Estate, said policy being at the time of his death in New York City, appraised at $14,820.11;

(g) Bonds issued by a Connecticut corporation, said bonds being in New York at time of death, appraised at $521.67; and

(h) Real estate situated in Connecticut, appraised at $45,000; cattle, horses, poultry, auto, wagons and carriages, situated in Connecticut, appraised at $1,058.75; stock in a Connecticut corporation, the certificate being in New York at the time of death, appraised at $120; an account receivable from a Connecticut resident, appraised at $2,675.52; and furniture situated in Connecticut appraised at $243.00.

The power of the State of Connecticut to impose a tax upon the succession to the property enumerated in paragraph (h) the Executors do not challenge.

NEW YORK PROCEEDINGS.

The will and the codicils were first offered for probate in the Surrogate's Court of New York County and on November 28, 1924, letters testamentary thereon were issued to the plaintiffs-in-error, respondents (herein referred to as the Executors) (R. 31).

On January 19, 1925, a transfer tax appraiser was appointed by the Surrogate's Court of New York County, who on December 31, 1925, reported that he had appraised the taxable property of the deceased within New York. His report was confirmed by an order of the Surrogate's Court of New York County dated January 6, 1926 (R. 37-38).

The New York Transfer tax law then in force (Laws 1922, ch. 430, printed in the Appendix at pages 52-53, *infra*) provided that the following property of non-residents should be subject to the New York Transfer tax: (a) real property, goods, wares and merchandise within the state, (b) shares of stock of domestic corporations, (c) stock, bonds or notes in foreign corporations where the property represented by such stock, bonds or notes consist

of real property located within the state to the extent to which the value of such real property is represented in the stock, bonds or notes, (d) an interest in a partnership conducting business in New York and (e) capital invested within the state. A transfer tax was accordingly levied by and paid to the State of New York only upon:

(a) The interest in the partnership of William Openhym & Sons, and

(b) The shares of stock in the New York corporations.

The total amount of the tax paid to the State of New York was $19,166.04 (R. 37-38).

CONNECTICUT PROCEEDINGS.

On January 8, 1925, the Executors exhibited to the Court of Probate for the District of Stamford, Connecticut, an exemplified copy of the will and codicils of the decedent and the record of the procedure establishing the same in the Surrogate's Court of New York, and on January 15, 1925, the Court of Probate for the District of Stamford, Connecticut, issued letters testamentary to these Executors (R. 40).

On September 1, 1925, they filed in the Court of Probate for the District of Stamford, and with the petitioner, defendant-in-error, herein, the Tax Commissioner of the State of Connecticut (herein called the Tax Commissioner) a statement under oath covering the property of the estate and the claimed deductions therefrom, for the purpose of determining the succession tax due the State of Connecticut. The Connecticut Succession and Transfer Tax Act

then in effect and concededly governing this case (Chapter 190 of the Acts of 1923) provided:

> "SECTION 1. All property and any interest therein, owned by a resident of this State at the time of decrease * * * shall be subject to the tax herein prescribed."

The Tax Commissioner then filed a copy of his computation of the tax due the State of Connecticut with the Court of Probate—using as the basis of his computation all of the property enumerated (p. 5, *supra*) including the interest in the partnership, Liberty Bonds, Certificates of Indebtedness, stock in foreign corporations, savings bank account, cash, the policy of insurance and the bonds of a Connecticut corporation (R. 48-49). The Executors made objections thereto. The Probate Court, by an order dated December 4, 1925, approved the computation as filed by the Tax Commissioner and directed payment of the sum of $188,780.58.

The Executors appealed to the Superior Court of Fairfield County, alleging as reasons of appeal that none of the decedent's property (except that itemized in paragraph (h), page 6, *supra*), was subject to the Connecticut succession tax, that the imposition of the tax upon such property constituted a denial of due process of law in violation of the Federal Constitution, and that the attempt of Connecticut to assert jurisdiction in relation to the transfer of said property amounted to a failure to give full faith and credit to the laws of New York in violation of the Federal Constitution (R. 4-6).

An agreed stipulation of facts (R. 6-22) was entered into and it was stipulated that among the questions of law involved in the appeal were whether the interest in

the partnership in whole or in part, United States Liberty Bonds, Treasury Certificates, stocks of foreign corporations, savings bank account, proceeds of the life insurance policy, and coin and bank notes (described as cash on hand) were subject to the Connecticut succession tax (R. 23); whether the imposition of the succession tax upon these items of property constituted a taking of property in violation of Amendment XIV of the Constitution of the United States; and whether the imposition of the succession tax upon any of these items of property was a failure to give full faith and credit to the laws of the State of New York in violation of Article IV, Section 1, of the Constitution of the United States (R. 24).

By agreement of the parties and upon order of the Superior Court (R. 56) the questions of law involved in the appeal were referred to the Supreme Court of Errors of Connecticut for advice and determination.

The Supreme Court of Errors in an opinion dated October 18, 1926 (R. 56 to 76), reported in 105 Conn. 192, held that the Liberty Bonds, Treasury Certificates and cash were not subject to the Connecticut succession tax because the imposition of such a tax would be a taking of property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States, but that the imposition of the succession tax upon every other item of property (interest in the partnership, stocks in foreign corporations, savings account in a New York bank, the life insurance policy payable to the estate and bonds of a Connecticut corporation) was a constitutional exercise under the Fourteenth Amendment of the taxing power of the State of Connecticut and was not a denial of due process of law nor a failure to give full faith and credit to the laws of New York.

Accordingly, a final judgment was entered by the Superior Court of Fairfield County adjudging (R. 78-81)

> "3. That the 'bearer' United States Liberty Bonds, valued at $604,356.10, owned by a decedent at the time of his death and physically situated in the State of New York at said time, were not subject to the Connecticut succession tax."
>
> "4. That the 'bearer' Treasury Certificates, valued at $10,765.07, owned by the decedent at the time of his death and physically situated in the State of New York at said time, were not subject to the Connecticut succession tax."
>
> "9. That the coins and bank notes (described as cash on hand) valued at $287.48, belonging to the decedent at the time of his death and situated at that time in the State of New York, were not subject to the Connecticut succession tax."
>
> "11. That the succession tax imposed by the State of Connecticut on the items of property belonging to the decedent at the time of his death and referred to in the foregoing paragraphs 3, 4 and 9, is a taking of property without due process of law, in violation of Amendment XIV of the Constitution of the United States."

The court also adjudged that the decedent's interest in the partnership was not to be treated as consisting of specific items of partnership property and was subject in whole to the Connecticut tax, that the stocks of foreign corporations, savings account in a New York bank and the proceeds of the policy of life insurance were subject to the Connecticut succession tax, and that the tax upon these items of property was not a taking of property without due

process of law nor a failure to give full faith and credit to the laws of the State of New York.

A writ of certiorari was granted by order of this court dated April 18, 1927, to review that portion of the judgment of the Superior Court of Fairfield County thus set out in paragraphs numbered 3, 4, 9 and 11 above (R. 95).

The Executors have taken a writ of error to this court to review so much of the judgment of the Superior Court of Fairfield County as held that the imposition of the tax was not a denial of due process of law nor a failure to give full faith and credit to the laws of New York.

Specifications of Error.

The Tax Commissioner, petitioner herein, alleges that the Superior Court of Fairchild County erred in adjudging, in accordance with the mandatory advice of the Supreme Court of Errors, that the State of Connecticut had no power under the Fourteenth Amendment to the United States Constitution to impose a tax upon the succession to the United States Liberty Bonds, Treasury Certificates of Indebtedness and cash owned by a citizen of Connecticut which were in the State of New York at the time of death.

It is submitted that the State of Connecticut was entitled to impose a tax upon the succession to all of the property here in question owned by the decedent at the time of his death. This is a brief for the petitioner in so far as this case is here upon writ of certiorari and it is an answering brief in so far as the case is here upon writ of error.

Summary of Argument.

These cases involve the determination of the jurisdiction of the State of Connecticut to impose a tax upon the succession to intangible personal property owned by one of its citizens at the time of his death. The power of the state of domicile to impose a tax upon the succession to such property of its citizen is an incident of its sovereignty and that power cannot be denied, unless somewhere within the Constitution of the United States there is found a prohibition of its exercise.

An examination of the cases decided by this court shows that classes of property identical with those here involved and similarly held outside the state at the time of death have been held taxable by the state of domicile. *Carpenter* v. *Pennsylvania,* 17 How. 456; *Keeney* v. *New York,* 222 U. S. 525; *Bullen* v. *Wisconsin,* 240 U. S. 625. This line of cases, augmented by dicta in many of the decided cases of this court, is, we believe, in no wise impaired or affected by the decision in *Frick* v. *Pennsylvania,* 268 U. S. 473. The contention that this property is not taxable takes two alternative phases: one, that the property is tangible property and as such is within the rule of the *Frick* case, and, two, that intangible personal property represented by specialties outside the state of domicile at the time of death cannot be taxed by the state of domicile. The answer to the first contention is that the property here in question consists of choses in action which in no real sense have any attributes of tangibility and that the doctrine of the *Frick* case is confined to chattels, the value of which is inherent in the thing, and which have an actual *situs* outside the tax-

ing state. The answer to the second contention is that such taxation has been imposed for many years by the several states and the power so to tax has been sustained by this court.

We submit, therefore, that all of the property here involved was properly included in the computation of the succession tax due the State of Connecticut.

ARGUMENT.

FIRST: The state of domicile can constitutionally impose a tax upon the succession to all of its citizen's intangible property even though the documents representing such property were at the time of the citizen's death outside the state.

Mr. Hirsch was concededly domiciled in Connecticut at the time of his death (R. 6).

The Connecticut Succession and Transfer Act of 1923 is a tax, not upon property, but upon the right or privilege of succession to the property of a decedent. *Corbin* v. *Townshend*, 92 Conn. 501. The nature of the tax has been explained and interpreted in *Hopkins' Appeal*, 77 Conn. 644; *Warner* v. *Corbin*, 91 Conn. 532; *Gallup's Appeal*, 76 Conn. 617; *Nettleton's Appeal*, 76 Conn. 235.

Concerning the Act of 1923 here in question, the Supreme Court of Errors in *Silberman* v. *Blodgett*, 105 Conn. 192, at p. 201, said:

> "Our present Succession Act, Chapter 190 of the Public Acts of 1923, does not differ in material degree from our earlier Succession Acts; the decisions under the earlier Acts are therefore equally applicable to the Act of 1923. It is 'not a tax upon property, but upon the right or privilege to succession to the property of a decedent.' *Corbin* v. *Townshend*, 92 Conn. 501, 503."

The nature of an inheritance tax such as that of the State of Connecticut has been explained by this court in *Plummer* v. *Coler*, 178 U. S. 115; *United States* v. *Perkins*,

163 U. S. 625; *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283. In *Knowlton* v. *Moore*, 178 U. S. 41, Justice White, writing the opinion of the court, said (p. 47):

> "Taxes of this general character are universally deemed to relate, not to property *eo nomine*, but to its passage by will or by descent in case of intestacy, as distinguished from taxes imposed on property, real or personal as such, because of its ownership and possession. In other words, the public contribution which death duties exact is predicated on the passing of property as the result of death as distinct from a tax on property disassociated from its transmission or receipt by will, or as the result of intestacy."

The power of the state of a man's domicile to impose a tax upon the succession to or the transfer of his intangible property even when the evidences of such property were outside the state at the time of his death has constantly been asserted by the Legislatures of the various states. The Supreme Court of Errors of Connecticut states that at the present time the inheritance tax laws of over four-fifths of the states impose a tax similar to that imposed by Connecticut. *Silberman* v. *Blodgett*, 105 Conn. 192, 205 (R. 65). The state courts of highest resort have upheld the imposition of such a tax. Thus, in *Frothingham* v. *Shaw*, 175 Mass. 59, the power of Massachusetts to impose a tax upon the inheritance of the stocks and bonds of foreign corporations, bonds executed by residents of New York secured by mortgages on New Hampshire real property, and cash deposited in a savings bank and with individuals in New York all owned by one of its citizens, was sustained. In *Hopkins' Appeal*, 77 Conn. 644, Connecticut's power to

impose a tax upon the inheritance of one of its citizen's stocks and bonds in foreign corporations and bonds of the State of North Carolina, all of which property was in New York at the time of death, and cash and credits on deposit in New York, was affirmed. In *re Estate of Zook* (Missouri Sup. Ct., July, 1927), 296 S. W. 778, the power of Missouri to impose an inheritance tax upon stock in a Nebraska corporation owned by one of its citizens and located in Nebraska at the time of death, was upheld. In *In re Sherwood's Estate,* 122 Wash. 648, Washington's power to impose an inheritance tax upon shares of stock of foreign corporations and United States Treasury Certificates of Indebtedness owned by one of its ctizens and held without the state at the time of death, was upheld. In *Mann* v. *Carter,* 74 N. H. 345, New Hampshire's power to impose an inheritance tax upon a savings deposit in a Massachusetts bank owned by one of its citizens at the time of her death, was affirmed. In *People* v. *Union Trust Company,* 255 Ill. 168, Illinois' power to impose an inheritance tax upon stocks and bonds of foreign corporations of the value of $600,000, owned by a resident decedent, which property was in a safety deposit box in California, and upon a deposit of $16,140 in a California bank, was sustained. In *Lines' Estate,* 155 Pa. 378, Pennsylvania's power to impose a tax upon stock in a New Jersey corporation and mortgage bonds of a Missouri corporation which had been transferred by one of its citizens to a trust company in New York upon a revocable trust and which property was in New York at the time of death, was upheld. In *In re Estate of Hodges,* 170 Cal. 492, California's power to impose a tax upon the inheritance to stocks and bonds of foreign corporations owned

by one of its citizens which were actually in Massachusetts at the time of death, and deposits in Massachusetts banks, was sustained, and in *Commonwealth* v. *Williams' Executor,* 102 Va. 778, Virginia's power to impose a personal property tax upon stocks and bonds of foreign corporations of its citizen which were in the vaults of a New York safe deposit company at the time of death, was upheld.

The power has been affirmed by repeated decisions of this court. Thus, in *Carpenter* v. *Pennsylvania,* 17 How. 456, the State of Pennsylvania's jurisdiction to impose a tax upon the inheritance of stock in foreign corporations, bonds of the State of Kentucky and money on deposit in New York, the bonds and certificates of stock being without the state, was upheld, the court saying (p. 462):

> "nor is authority of the State to levy taxes upon personal property belonging to its citizens, but situated beyond its limits, denied."

While this case was decided prior to the adoption of the Fourteenth Amendment to the Constitution of the United States, the principles therein enunciated were reaffirmed in *Orr* v. *Gilman,* 183 U. S. 278, where the court cited *Carpenter* v. *Pennsylvania,* and said (p. 286):

> "It is true that this case was decided before the adoption of the Fourteenth Amendment, but we think it correctly defines the limits of jurisdiction between the State and the Federal Governments in respect to the control of the estates of decedents, both as they were regarded before and have been regarded since the adoption of the Fourteenth Amendment. It has never been held that it was the purpose or function of that amendment to change the systems and policies of the States in regard to the devolution

> of estates or to the extent of the taxing power over them."

In *Keeney* v. *New York*, 222 U. S. 525, the jurisdiction of the State of New York to impose a tax upon the transfer of property of one of its citizens which had been conveyed *inter vivos* upon a revocable trust to a New Jersey trustee and which at the time of his death was located in Newark, New Jersey, was upheld. This property included stocks and bonds of corporations not organized under the laws of New York.

In *Bullen* v. *Wisconsin*, 240 U. S. 625, the power of the State of Wisconsin to impose a tax upon the succession to certain property of its citizen, the evidences of which were held by a trust company in Illinois upon a revocable trust at the time of his death, was sustained. This property (as appears from pages 68-70 of the Transcript of Record in this court) included shares of stock in Missouri, New Jersey and Illinois corporations; stock in a national bank organized under the National Banking Act; mortgage bonds and debentures issued by New Jersey, Illinois, Missouri, Utah and Kansas corporations; promissory notes of residents of Illinois and Minnesota; insurance policies issued by New York, Canadian and Wisconsin insurance companies; and money on deposit in two Illinois banks. All this property (except the insurance policy issued by the Wisconsin company, payable to the decedent's wife as beneficiary and invalidly assigned to the estate) had been subjected to the Illinois inheritance tax. Concerning the power of the State of Wisconsin to levy the tax in question, this court said, by Justice Holmes (p. 631):

> "The power to tax is not limited in the same way as the power to effect the transfer of property. If this fund had passed by intestate succession it would be recognized that by the traditions of our

> law the property is regarded as a *universitas* the succession to which is incident to the succession to the *persona* of the deceased. As the States where the property is situated, if governed by the common law, generally recognize the law of the domicil as determining the succession, it may be said that, in a practical sense at least, the law of the domicil is needed to establish the inheritance. Therefore the inheritance may be taxed at the place of domicil, whatever the limitation of power over the specific chattels may be, and it is especially plain in the case of contracts and stock."

In *Rhode Island Hospital Trust Company* v. *Doughton*, 270 U. S. 69, Chief Justice Taft, writing for the whole court, said (p. 81):

> "In the matter of intangibles, like choses in actions, shares of stock and bonds, the situs of which is with the owner, a transfer tax, of course, may properly be levied by the State in which he resides."

The Executors were forced below to contend that the decision in the *Frick* case overruled *Bullen* v. *Wisconsin*. That contention has been precluded by this court itself for it cited *Bullen* v. *Wisconsin* in the *Frick* case and recognized that, in regard to the taxation of intangibles, it was controlling authority. Its authority was reaffirmed, subsequent to the decision in the *Frick* case, in *Rhode Island Hospital Trust Co.* v. *Doughton*, 270 U. S. 69. Much has been said by the Executors in the courts below as to the changes in industrial society which have rendered obsolete the rule *mobilia sequuntur personam*, which they contend is the sole basis of *Bullen* v. *Wisconsin*. We do not apprehend such changes have occurred since 1915, when the power of the state of domicile to impose a succession tax

upon classes of property identical to those now in question and similarly held at the time of death was upheld by a unanimous court, nor since 1926 when that power was reiterated.

Nor does the decision in *Wachovia Trust Company* v. *Doughton*, 272 U. S. 567, in any way impair the settled rule enunciated in *Bullen* v. *Wisconsin*. The decision in the *Wachovia Trust Company* case turns solely upon the question of the Massachusetts law relating to testamentary powers. The testamentary power was created by a will executed by a resident of Massachusetts. The Supreme Court looked to the law of the domicile of the testator-donor and applied that law in determining whether the legatee took from the donor of the power, a Massachusetts citizen, or from the donee, a North Carolina citizen. Under the law of Massachusetts, the legatee takes from the donor. Accordingly, the State of North Carolina was held powerless to impose a tax upon the legatee's succession, since "No right exercised by the donee was conferred upon her by North Carolina" (272 U. S. 567, 575).

Even in the matter of the imposition of property or *ad valorem* taxes, the power of the state of domicile to impose a tax upon intangible personal property without the state has been upheld.

In *Cream of Wheat Company* v. *County of Grand Forks*, 253 U. S. 325, the State of North Dakota taxed its domestic corporations upon the aggregate market value of its outstanding stock less the value of all of its real and personal property and less certain indebtedness. This tax was construed by the state court as a tax upon the corporate franchise. The Cream of Wheat Company, a North Dakota corporation, conducted its manufacturing, commercial and financial business wholly outside the state. In sustaining the tax, this court said (pp. 328, 329):

"The Company was confessedly domiciled in North Dakota; for it was incorporated under the laws of that State * * *. The fact that its property and business were entirely in another state did not make it any the less subject to taxation in the state of its domicile. The limitation imposed by the Fourteenth Amendment is merely that a State may not tax a resident for property which has acquired a permanent *situs* beyond its boundaries * * *. The limitation upon the power of taxation does not apply even to the tangible personal property without the state of the corporation's domicile if, like a seagoing vessel, the property has no permanent *situs* anywhere. * * * Nor has it any application to intangible personal property."

In *Kirtland* v. *Hotchkiss*, 100 U. S. 491, the power of the State of Connecticut to tax its citizen upon certain bonds executed by residents of Illinois secured by mortgage of Illinois real property, which bonds were held in Illinois * was sustained, this court saying, at page 498:

"The question does not seem to us to be very difficult of solution. The creditor, it is conceded, is a permanent resident within the jurisdiction of the State imposing the tax. The debt is property in his hands constituting a portion of his wealth, from which he is under the highest obligation, in common with his fellow-citizens of the same State, to contribute for the support of the government whose protection he enjoys.

"That debt, although a species of intangible property, may, for the purposes of taxation, if not for all others, be regarded as situated at the domicile of the creditor. It is none the less property because

* This appears in 42 Conn. 426, 429 and in the argument of counsel in the Supreme Court, 100 U. S. p. 494. The actual location of the bonds was considered of no importance by this court.

> its amount and maturity are set forth in a bond. That bond, *wherever actually held or deposited,* is only evidence of the debt, and if destroyed, the debt —the right to demand payment of the money loaned, with the stipulated interest—remains." (Italics ours.)

In *Citizens National Bank* v. *Durr,* 257 U. S. 99, Ohio's power to impose a property tax against one of its citizens upon his membership in the New York Stock Exchange was upheld. In that case, it appeared that the New York Stock Exchange was a voluntary association, that among its principal assets was the ownership of all of the capital stock of a holding corporation which owned the real property located in New York City which housed the Exchange. In sustaining the right of Ohio thus to tax the membership in this Association, the court said, p. 109:

> "Nor is plaintiff's case stronger if we assume that the membership privileges exercisable locally in New York enable that State to tax them even as against a resident of Ohio. (See *Rogers* v. *Hennepin County,* 240 U. S. 184, 191.) Exemption from double taxation by one and the same State is not guaranteed by the Fourteenth Amendment (*St. Louis Southwest Ry. Co.* v. *Arkansas,* 235 U. S. 350, 367-368); much less is taxation by two states upon identical or closely related property interests falling within the jurisdiction of both, forbidden."

And in *Fidelity & Columbia Trust Co.* v. *Louisville,* 245 U. S. 54, it was held that the City of Louisville in the State of Kentucky had the power to collect a tax upon property not included by one of its citizens in his return filed during his lifetime. The property was a bank account in a St. Louis, Missouri, bank. It was conceded by this court that

the bank account was also taxable in Missouri. Justice Holmes, writing for this court, said (pp. 58-59):

> "It is argued that in a later case this court has held the power of taxation not to extend to chattels permanently situated outside the jurisdiction, although the owner was within it. *Union Refrigerator Transit Co.* v. *Kentucky,* 199 U. S. 194; and that the power ought equally to be denied as to debts depending for their validity and enforcement upon a jurisdiction other than that levying the tax. But this Court has not attempted to press the principle so far and there is opposed to it the long established practice of considering the debts due to a man in determining his wealth at his domicile for the purpose of this sort of tax. The notion that a man's personal property upon his death may be regarded as a *universitas* and taxed as such, even if qualified, still is recognized both here and in England. *Bullen* v. *Wisconsin,* 240 U. S. 625, 631; *Eidman* v. *Martinez,* 184 U. S. 578, 586; *Attorney-General* v. *Napier,* 6 Exch. 217. It has been carried over in more or less attenuated form to living persons, and the general principle laid down in *Kirtland* v. *Hotchkiss, supra,* has been affirmed or assumed to be the law in every subsequent case."

To be sure, this court has sustained the power of the states to impose a property tax upon credits created in the course of business by a non-resident when the debtor resided within the taxing state—the so-called "business *situs*" cases—*New Orleans* v. *Stempel,* 175 U. S. 309; *Metropolitan Life Insurance Company of New York* v. *New Orleans,* 205 U. S. 395; *Liverpool & London & Globe Insurance Co.* v. *Orleans Assessors,* 221 U. S. 346; *Board of Assessors* v. *Comptoir National,* 191 U. S. 388; *Bristol* v. *Washing-*

ton County, 177 U. S. 133. It has sustained the power of the states in which bank deposits and negotiable instruments were located belonging to a non-resident to impose a tax upon the succession to them. *Blackstone* v. *Miller,* 188 U. S. 189; *Wheeler* v. *Sohmer,* 233 U. S. 434.

But all these cases are wholly irrelevant to the issues here involved. They in no wise diminish the power of the domiciliary state to impose a tax upon the succession to the same property. That this double power of taxation does exist side by side is demonstrated by the decision in *Bullen* v. *Wisconsin, supra,* where after Illinois had imposed a tax upon the succession to the shares of stock, the bonds, the checking account in the Illinois bank, and the policies of insurance in the New York and Canadian companies, this court upheld the power of the State of Wisconsin, the domicile of the owner, to impose a tax upon the succession to the same property. Double taxation does not constitute a denial of due process. *Kidd* v. *Alabama,* 188 U. S. 730; *Citizens National Bank* v. *Durr,* 257 U. S. 99. In *Blackstone* v. *Miller,* 188 U. S. 189, Justice Holmes, writing for the court, said (pp. 204, 205):

> "No doubt this power on the part of two States to tax on different and more or less inconsistent principles leads to some hardship. It may be regretted, also, that one and the same State should be seen taxing on the one hand according to the fact of power, and on the other, at the same time, according to the fiction that, in successions after death, *mobilia sequuntur personam* and domicile governs the whole. But these inconsistencies infringe no rule of Constitutional law."

> (pp. 206, 207) "The fact that two States, dealing each with its own law of succession, both of which the plaintiff in error has to invoke for her rights, have taxed the right which they respectively confer, gives no cause for complaint on Constitutional grounds. *Coe* v. *Errol*, 116 U. S. 517, 524; *Knowlton* v. *Moore*, 178 U. S. 53. The universal succession is taxed in one state, the singular succession is taxed in another. The plaintiff has to make out her right under both in order to get the money."

The problem of the avoidance of such double taxation is a problem not for the courts but for the legislatures of the various states and that problem the legislatures are today solving. The current solution widely adopted by the several states lies in the direction of recognizing that the principal and primary taxing jurisdiction is that of the domicile. Thus, thirty-five states: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Wisconsin and Wyoming, and the Philippine Islands do not tax certificates of stock of foreign corporations belonging to non-residents, even though the certificates of stock are within the state at the time of death. Bonds of foreign corporations belonging to non-residents and unregistered, which at the time of death are within the state, are not taxed by Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Kentucky, Maine, Maryland,

Massachusetts, Michigan, Minnesota, New York, North Dakota, Pennsylvania, Rhode Island, South Dakota, Tennessee, Vermont and Wisconsin. Unregistered municipal bonds owned by non-residents and within the state at the time of death are not taxed by Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Kansas, Kentucky, Maine, Maryland, Massachusetts, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, Wisconsin and Wyoming.

These illustrations suffice to show that the legislative tendency today is toward permitting the state of domicile to impose, and alone impose, a tax upon the succession to a man's intangible property, regardless of where it may be at the time of his death. It is this voluntary legislative action rather than the overruling of decided cases and the extension of the Fourteenth Amendment that will solve the problem of double taxation.

But the problem here involved is not double taxation, but escape from taxation. It must be recognized that at the present time a vast percentage of the wealth of this country is represented by intangibles, such as municipal bonds, shares of stock in foreign corporations and interest in unincorporated business conducted outside the state of domicile. If it should be held by this court that Government bonds and stocks in corporations organized in states other than that in which the decedent was domiciled can be constitutionally subjected to an inheritance tax only by the state in which the pieces of paper happen to be at the time of death, a large part of the wealth of this country will entirely escape from state inheritance taxation. By the simple expedient of depositing the bonds and certificates of stock in a safety deposit box in a state which has no inheritance tax, a man possessed of millions of dollars of wealth may thus

avoid taxation by the state in which he has lived and of which he died domiciled. And if it is true of Government bonds, it would seem equally to be true of municipal and state and corporate bonds. We submit that the Fourteenth Amendment does not necessitate any such result.

All the property here in question consists of choses in action, of a right on the part of the obligee to receive performance and a duty on the party of the obligor to render performance. The relationship is incapable of having spatial quality, of having an actual *situs*. When a chose in action is evidenced or represented by a document such as a bond, a certificate of stock or an insurance policy, the nature of the relationship is not changed. The obligation remains and that obligation can be enforced only where jurisdiction can be had over the obligor. Nor does the nature of the obligee's right to receive performance change. True, the document does have spatial quality and may have an actual *situs*. But its existence in a place in no wise affects the obligation. If a corporation organized under the laws of New Jersey issues a corporate bond which is owned by a citizen of Connecticut, the obligation of the debtor is in no whit affected by the chance that the bond one day is in New York, the next in Connecticut and the third in Florida. Nor is the right of the creditor to receive payment changed. A chose in action represented by a document can have no spatial qualities and no actual *situs*. The state of domicile, in the words of this Court, "for the general advantages of living within the jurisdiction" may, as it historically has, treat all of its citizen's choses in action as being present with him within the state. The right of the domicile so to do has been upheld by repeated decisions of this court. Thus, in *Kirtland* v. *Hotchkiss*, 100 U. S. 491, this court said (p. 498):

> "That debt, although a species of intangible property, may, for the purposes of taxation, if not for all others, to be regarded as situated at the domicile of the creditor. It is none the less property because its amount and maturity are set forth in a bond. That bond, wherever actually held or deposited, is the only evidence of the debt, and if destroyed, the debt—the right to demand payment of the money loaned, with the stipulated interest—remains."

To recapitulate: The power of the domiciliary state to impose a tax upon the succession to a citizen's intangible property, even when that property was evidenced by a writing not within the state, has been specifically sustained in *Carpenter* v. *Pennsylvania*, 17 How. 456; *Keeney* v. *New York*, 222 U. S. 525; *Bullen* v. *Wisconsin*, 240 U. S. 625.

The power is sustained *a fortiori* by the following cases upholding property taxes at the domicile on intangible property claimed by the taxpayer not to be within the state: *Kirtland* v. *Hotchkiss*, 100 U. S. 491; *Fidelity & Columbia Trust Co.* v. *Louisville*, 245 U. S. 54; *Citizens National Bank* v. *Durr*, 257 U. S. 99.

And the power is sustained by well considered statements in:

(1872) *State Tax on Foreign-Held Bonds*, 15 Wall. 300, 320;
(1881) *Bonaparte* v. *Tax Court*, 104 U. S. 592, 595;
(1903) *Blackstone* v. *Miller*, 188 U. S. 189, 207;
(1905) *Union Refrigerator Co.* v. *Kentucky*, 199 U. S. 194, 206, 211;
(1906) *Buck* v. *Beach*, 206 U. S. 392, 401;
(1911) *Southern Pacific R. R. Co.* v. *Kentucky*, 222 U. S. 63, 68;
(1914) *Hawley* v. *City of Malden*, 232 U. S. 1, 11;
(1920) *Cream of Wheat Co.* v. *County of Grand Forks*, 253 U. S. 325, 329;

(1925) *Frick* v. *Pennsylvania*, 268 U. S. 473, 494;
(1926) *Rhode Island Hospital Trust Co.* v. *Doughton*, 270 U. S. 69, 81.

These cases present consistent and indubitable authority validating the taxing power here exercised. This power, deemed to have existed since the inception of inheritance taxes in this country, cannot now be denied. It is entrenched in the fundamentals of our Government.

SECOND: The State of Connecticut has the constitutional power to impose its succession tax upon all of the property owned by this decedent which is in question in this case.

The computation of the Connecticut succession tax (R. 49) shows that the net taxable estate of Robert B. Hirsch was found to be $2,400,694.79. This figure is derived by adding the value of the property above enumerated (pages 5-6, *supra*) which amounts to $2,645,065.85, and subtracting therefrom the sum of $244,371.06, being deductions permitted by the State of Connecticut.

The Executors challenged the power of Connecticut to include in the computation of the tax all of the items of property above numerated (pages 5-6, *supra*) except that in paragraph (h). An examination of each item of property included by the Tax Commissioner in his computation shows that the State of Connecticut, under the repeated decisions of this court, had the power to measure the tax here imposed by all of the items of the decedent's property.

1. Questions Raised by Petitioner Under Writ of Certiorari.

(a) *Liberty Bonds and Treasury Certificates.*

The first item in controversy has to do with the power of the State of Connecticut to impose a tax upon the succession to the bearer United States Liberty Bonds and

Treasury Certificates of Indebtedness,* which were in New York at the time of death. The Supreme Court of Errors of Connecticut held that the bonds and treasury certificates were tangible property and as such, under the prohibition enunciated in the *Frick* case by this court, not taxable in Connecticut. This, we believe, is a misconception of the doctrine of the *Frick* case.

There is no mystery concerning the nature of a bond. It is the evidence of an indebtedness. *Kirtland* v. *Hotchkiss,* 100 U. S. 491; *Bonaparte* v. *Tax Court,* 104 U. S. 592. Recovery can be had without producing the bond. The common law rule requiring profert no longer exists. These bonds are readily transferable by delivery from one person to another just as, but to no greater extent than are other "listed securities"—bonds and shares of stock in large corporations.

But no amount of dealing, no amount of transfer, no amount of change, can destroy their essential characteristic as evidence of an indebtedness—as proof of the debtor's obligation to pay and of the creditor's right to receive. The property right thus evidenced is simply a chose in action which has no actual *situs* apart from the creditor. In no accepted sense can such a property right be considered tangible. Rather it is intangible and as such a succession tax may be levied upon it at the domicile of the

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*While these bonds and certificates of indebtedness were held by the partnership of William Openhym & Sons as "partners' investment" pursuant to the terms of letter dated December 1, 1923 (R. 27), it has been agreed between counsel for the respective parties that such property was not partnership property but was the individual private property of the decedent. It was not taxed by New York, although the interest of the decedent in the partnership was so taxed. The judgment of the Superior Court of Fairfield County, Connecticut, recites that these bonds and certificates of indebtedness were owned by the decedent at the time of his death (R. 79).

owner regardless of where the evidence may be. *Carpenter* v. *Pennsylvania, supra; Kirtland* v. *Hotchkiss, supra; Keeney* v. *New York, supra; Bullen* v. *Wisconsin, supra.*

Since these bonds are intangible property the rule of the *Frick* case has no application. It must be confined to chattels which have a permanent actual *situs* outside of the domiciliary state. The rule of the *Frick* case is deduced from the prior decision of this court in *Union Refrigerator Transit Co.* v. *Kentucky,* 199 U. S. 194. But that case recognized, as did the *Frick* case, that the rule announced had no application to intangible property. Indeed, the court in the *Union Transit Company* case said (p. 205):

> "Respecting this, there is an obvious distinction between the tangible and the intangible property, in the fact that the latter is held secretly; that there is no method by which its existence or ownership can be ascertained in the State of its *situs,* except perhaps in the case of mortgages or shares of stock. So if the owner be discovered, there is no way by which he can be reached by process in a State other than that of his domicil, or the collection of the tax otherwise enforced. In this class of cases the tendency of modern authorities is to apply the maxim *mobilia sequunter personam,* and to hold that the property may be taxed at the domicil of the owner as the real *situs* of the debt, and also, more particularly in the case of mortgages, in the State where the property is retained."

The basis of the decision by the Connecticut Court that these bonds were tangible property was that they were Government bonds as distinguished from corporate bonds. There is no justification for classifying corporate bonds as intangible property and Government bonds as tangible. If

anything the distinction between Government bonds and corporate bonds operates in the direction of rendering these Liberty Bonds less tangible than corporate bonds. In the first place, they are not a charge upon any specific property and so cannot be said to be identified with real property located in any particular jurisdiction. In the second place, the state courts of no state can render any assistance in the collection of the obligation. No state has jurisdiction over the debtor or can compel payment of the obligation. In the third place, the domicile of the debtor is as much in Connecticut as anywhere within the United States. As was said by Justice Story in *Vaughn* v. *Northup,* 15 Peters, 1, 6:

> "The United States, in their sovereign capacity, have no particular place of domicile, but possess, in contemplation of law, an ubiquity throughout the Union, and the debts due by them are not to be treated like the debts of a private debtor, which constitute local assets in his own domicile. On the contrary, the administrator of a creditor of the government, duly appointed in the state where he was domiciled at his death, has full authority to receive payment, and give a full discharge of the debt due to his intestate, in any place where the government may choose to pay it."

The Supreme Court of Errors in holding that these Liberty Bonds and Treasury Certificates were tangible property (distinguishing them from corporate bonds which for inheritance tax purposes must under the decisions of this court be considered intangibles) cited *State Tax on Foreign-Held Bonds,* 15 Wall. 300; *New Orleans* v. *Stempel,* 175 U. S. 309; *Westinghouse Electric & Manufacturing Com-*

pany v. *Los Angeles County*, 188 Cal. 491; *People* v. *Home Insurance Company*, 29 Cal. 533. These cases wholly fail to sustain any such distinction. *State Tax on Foreign-Held Bonds, supra,* concerned the power of the state of the domicile of the debtor to impose a tax upon interest paid to holders of corporate bonds owned and held outside of the state. *New Orleans* v. *Stempel, supra,* was concerned with the power of the state of the domicile of the debtor to tax money represented by notes held within the state which had been invested in the regular course of business in the state. *Westinghouse Electric & Manufacturing Company* v. *Los Angeles County, supra,* dealt with the power of California to impose a tax upon a foreign corporation doing business within the state and held that credits arising from business transacted within the state under the circumstances of the case, were not taxable. *People* v. *Home Insurance Company, supra,* held that bonds of the State of California owned by a foreign insurance company and deposited with a banker within the state, in compliance with conditions of the California Statute permitting foreign companies to do business in the state were "property . . . within the state" and were subject to the California Revenue Act.

The statements in these cases as to the nature of municipal or government bonds must be confined to the purpose for which the statements were made, namely, to illustrate that such property might be taxed at the domicile of the debtor or perchance where such bonds were held. But none of the cases involved the imposition of inheritance taxes and none of them purported to announce that the state of domicile could not impose a tax upon the succession to municipal or Government bonds which at the time of its citizen's death were outside the state.

Moreover, the Supreme Court of Errors of Connecticut wholly failed to consider the statement made by this court in *Eidman* v. *Martinez*, 184 U. S. 578, 581, that United States Bonds are intangible property.

The power of the state of domicile to impose a tax upon the succession to corporate bonds cannot now be disputed. *Keeney* v. *New York, supra; Bullen* v. *Wisconsin, supra.* There is no justification for a distinction between corporate bonds and Government bonds. But at all events the proposition is concluded by the decision of this court in *Carpenter* v. *Pennsylvania, supra,* where as it appears from an examination of the record in the case below, *In re Short's Estate,* 16 Pa. State 63, a part of the property upon which the State of Pennsylvania levied an inheritance tax comprised bonds of the States of Kentucky and Tennessee and of the cities of Louisville, Kentucky, St. Louis, Missouri, and Cincinnati, Ohio, which were outside Pennsylvania at the time of death.

It has been suggested that the classification of the bonds and certificates of indebtedness as tangible property is wholly a question of Connecticut law and that this court has not power to review that determination. To this effect the Executors have cited *American Steel & Wire Company* v. *Speed,* 192 U. S. 500; *Pennsylvania Railroad* v. *Hughes,* 191 U. S. 477; *Consolidated Turnpike* v. *Norfolk & Ocean View Railway Co.,* 228 U. S. 596; *Doyle* v. *Atwell,* 261 U. S. 590, all of which involved some problem of the interpretation of a state statute. But the Supreme Court of Errors was not concerned with an interpretation of the Connecticut statute. The words of the statute were adequate for the purpose of

reaching the property in question. Such was the legislative intent. The sole controversy was as to the extent of the prohibition of the Fourteenth Amendment. The decision of the Connecticut Court is not that Liberty Bonds located in New York at the time of death were not within the terms of the Connecticut taxing statute but rather that the decisions of this court necessitated the holding that the State of Connecticut could not constitutionally tax such property. That decision was the determination of a federal question. *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U. S. 109.

The question is not as to which pigeon hole—that labelled "tangibles" or that labelled "intangibles"—this court will place these Liberty Bonds and Certificates of Indebtedness. The question is whether the State of Connecticut had the power to impose a tax upon the succession to them. Under the decisions of this court reiterated now for eighty years the State of Connecticut had that power. *Carpenter* v. *Pennsylvania*, 17 How. 456; *Keeney* v. *New York*, 222 U. S. 525; *Bullen* v. *Wisconsin*, 240 U. S. 625; *Rhode Island Hospital Trust Co.* v. *Doughton*, 270 U. S. 69.

(b) *Cash on Hand in New York.*

Among the decedent's property was the sum of $287.48, consisting of coin and bank notes (R. 26), which was in New York at the time of death. Apparently it was simply loose money which the decedent had in New York.

Under the decisions of this court, that property was taxable by the State of Connecticut. The rule enunciated in the *Frick* case must be considered as confined to the type of property there involved. That property was, to a large extent, the valuable paintings and works of art which now comprise the Frick collection, together with the household

furniture in New York and certain chattels consisting of domestic animals, automobiles, and the like in Massachusetts. None of that property, so far as the record shows, had ever been within the State of Pennsylvania. The property had acquired a permanent abiding place outside of the State of Pennsylvania. That this court did not intend the rule there enunciated to apply to all personal property is shown by the fact that it quoted from its opinion in *Pullman's Car Company* v. *Pennsylvania,* 141 U. S. 18, 22.

> "The old rule, expressed in the maxim *mobilia sequuntur personam,* by which personal property was regarded as subject to the law of the owner's domicil, grew up in the middle ages, when movable property consisted chiefly of gold and jewels, which could be easily carried by the owner from place to place, or secreted in spots known only to himself."

This statement is peculiarly applicable to the cash on hand now under consideration. Certainly, if the rule of *mobilia sequuntur personam* is applicable to gold and jewels because that class of property can be easily carried by the owner from place to place and secreted in spots known only to himself, it is applicable to bank notes and coin. The State of New York did not impose a tax upon the transfer of this property. It was of the class of property that ordinarily escapes taxation. It is of the class of property that is easily moved about with the person of the owner; that can be left by him in places where it is not apt to be found and in states where no inheritance taxes are imposed. These reasons justify the State of Connecticut in imposing a tax upon the succession to it.

This disposes of all of the property in controversy under the writ of certiorari. As to that property, we believe that the Supreme Court of Connecticut erred in holding that the rule enunciated in the *Frick* case prohibited the imposition of a succession tax upon this wholly dissimilar property. This property was not taxed in New York. The problem, therefore, is not one of "double taxation", but rather of "escape from taxation".

2. Questions Raised by the Executors on Writ of Error.

The Supreme Court of Connecticut sustained the imposition of the succession tax upon the interest in the partnership, the life insurance policy payable to the estate, the shares of stock in corporations not organized under the laws of Connecticut, the certificates of which were in New York at the time of death, the savings account in the National City Bank of New York, and the bonds issued by Connecticut corporations, the bonds being in New York.

(c) *Interest in the Partnership of William Openhym & Sons.*

The decedent's interest as a general partner in the partnership of William Openhym & Sons was valued at $1,687,245.34 (R. 7).

An examination of the record shows that the total assets of the partnership amounted to $3,771,766.02, of which real property amounted to $15,812.27, merchandise $68,042.99 and furniture and fixtures $8,000. All the rest of the property consisted of bank deposits, trade acceptances, notes and loans receivable, accounts receivable, advances, prepaid expenses to travellers, stock in foreign corporations and United States Liberty Bonds (R. 8-9). The indebtedness of the partnership amounted to $969,604.05, so that

the net value of the partnership was $2,802,161.97. Of this, as has been stated, the interest of the deceased was appraised at $1,683,269.56.

The partnership was a limited partnership organized in New York, the last agreement therefor having been executed in New York City on December 1, 1921 (R. 8). The New York Partnership Law then in force was Chapter 408, Laws of 1919, with immaterial differences identical with the Uniform Partnership Act, and the pertinent sections thereof are printed at pages 54-56 *infra*. To this statute there was added by Chapter 640 of the Laws of 1922 an article relating to limited partnerships, substantially identical with the Uniform Limited Partnership Act. This article in so far as here material was declaratory of the existing New York Law.

The nature of the interest of the decedent in this partnership must be determined in accordance with the law of New York. *King* v. *Sarria*, 69 N. Y. 24. This was conceded by the Executors in the State court. And of course under the Connecticut law there can be no question but that the interest of the deceased partner is an intangible one. *Canfield* v. *Hard*, 6 Conn. 180; *Filley* v. *Phelps*, 18 Conn. 294; *Witter* v. *Richards*, 10 Conn. 37.

Under Section 50 of the New York Law the property rights of a partner are (a) his rights in specific partnership property; (b) his interest in the partnership, and (c) his right to participate in the management.

Under Section 51, a partner is a co-owner with his partner of specific partnership property, holding this property as a tenant in partnership. This tenancy in partnership introduced by the Uniform Partnership Act and as defined by Section 51 has these incidents. A partner has a right equal to that of his partners to possess specific partnership property for partnership purposes, but not otherwise. His right in specific partnership property is not assignable nor

is it subject to attachment or execution upon a personal claim against him; upon his death the right to the specific property vests not in the partner's personal representative but in the surviving partner; his right in specific property is not subject to dower, courtesy or allowance to widows, heirs or next of kin.

By Section 52, it is specifically provided.

> "A partner's interest in the partnership is his share of the profits and surplus and the same is personal property."

Under Section 73, when the partner dies and the partnership continues, his partner's personal representative may have the value of his interest at the date of dissolution ascertained and receive as an ordinary creditor an amount equal to the value of his interest in the partnership with interest.

The rights of a general partner in a limited partnership are identical to those of a general partner in a general partnership, Sec. 98. And in regard to a limited partner's interest, Sec. 107 specifically provides:

> "A limited partner's interest in the partnership is personal property."

There is thus no distinction between the rights of a general partner in a limited partnership and those of a general partner in a general partnership. Both the general partner's and the limited partner's interest in the partnership is intangible personal property.

The interest of the decedent in the partnership of William Openhym & Sons was, under the law, simply a right to share in the partnership assets after its liabilities were deducted and a balance struck; it was an interest in the surplus, a chose in action.

Thus, in this very case, the amount of the gross assets of the partnership was established. The liabilities were ascertained, a balance struck and a certain percentage of that sum paid over to the Executors of Robert B. Hirsch. This interpretation of the nature of the decedent's interest in the partnership is confirmed by the very language of the partnership agreement itself. That agreement provided that in the event of death of any of the parties thereto the partnership should be dissolved and the interest or share of the deceased person should be taken and stated at the sum standing to the credit of the account of such deceased partner (R. 8).

In other words, the partnership agreement itself evidences the intention of the partners that their interest in the partnership property shall be an intangible one, that is, a right to an accounting. Even in New York before the Partnership Law of 1919 the intention of the partners was recognized as controlling. Thus, in *Darrow* v. *Calkins,* 154 N. Y. 503, it was said (pp. 515, 516):

> "It is, however, generally conceded that the question whether partnership real estate shall be deemed absolutely converted into personalty for all purposes, or only converted *pro tanto* for the purpose of partnership equities, may be controlled by the express or implied agreement of the partners themselves, and that where by such agreement it appears that it was the intention of the partners that the lands should be treated and administered as personalty for all purposes, effect will be given thereto. In respect to real estate purchased for partnership purposes with partnership funds and used in the prosecution of the partnership business, the English rule of 'out and out' conversion may be regarded as properly ap-

> plied on the ground of intention, even in jurisdictions which have not adopted that rule as applied to partnership real estate acquired under different circumstances and where no specific intention appeared. The investment of partnership funds in lands and chattels for the purpose of a partnership business, the fact that the two species of property are in most cases of this kind, so commingled that they cannot be separated without impairing the value of each, has been deemed to justify the inference that under such circumstances the lands as well as the chattels were intended by the partners to constitute a part of the partnership stock and that both together should take the character of personalty for all purposes, and Judge Denio in *Collumb* v. *Read* (*supra*) expressed the opinion that to this extent the English rule of conversion prevailed here. That paramount consideration should be given to the intention of the partners when ascertained, is conceded by most of the cases."

It, therefore, clearly appears that both under the partnership agreement and under the laws of the State of New York in which the partnership was formed, the interest of the partner was the right to receive a sum of money equal to his share of the net value of the partnership. This right to receive money, not even evidenced by a specialty, is intangible property.

In *Citizens National Bank* v. *Durr,* 257 U. S. 99, the power of the State of Ohio to impose a tax upon one of its citizen's membership in the New York Stock Exchange, a voluntary association organized in New York, was sustained, although much of the value of the membership was derived from being able to buy and sell securities in the Exchange, located in New York, and from the Association's

ownership of all of the stock of a New York corporation which had title to the real estate which housed the Exchange in New York, valued at in excess of $5,000,000.

The decedent's interest in the partnership being thus intangible property, it was properly included within the computation under the provisions of the Connecticut Succession Tax. That New York also subjected this interest to a transfer tax in no way affects the validity of the Connecticut tax and it is to be noted in this connection that the New York tax was levied not because the interest of the partner consisted of an interest in real property, goods, wares and merchandise within the State but because the statute specifically taxed the interest of a non-resident decedent in a partnership conducted within the State of New York. (See Appendix, pages 52-53). Under the law of New York and under the terms of the partnership agreement the decedent's entire interest in this partnership was an intangible interest, a right to an accounting, a right that there should be paid over to him a sum equal to his proportionate share of the net value of the partnership. That interest, we submit, was constitutionally taxed by the State of Connecticut.

(d) *Shares of Stock in Foreign Corporations.*

The decedent died owning shares of stock in corporations organized under the laws of New York, New Jersey and Canada, the certificates of which were in New York at the time of death, appraised at $277,984.25. New York imposed a tax only upon the transfer of the shares in the New York corporations.

The nature of a stockholder's interest in a corporation has recently been clearly defined by this court, in *Rhode Island Hospital Trust Co.* v. *Doughton,* 270 U. S. 69, 81:

> "The owner of the shares of stock in a company is not the owner of the corporation's property. He has a right to his share in the earnings of the corporation, as they may be declared in dividends, arising from the use of all its property. In the dissolution of the corporation he may take his proportionate share in what is left, after all the debts of the corporation have been paid and the assets are divided in accordance with the law of its creation. But he does not own the corporate property."

The power of the State of Connecticut to impose a tax upon such shares of stock so located at the time of death has constantly been upheld by the state courts. *People* v. *Union Trust Company,* 255 Ill. 168; *Cornett's Executors* v. *Commonwealth,* 127 Va. 640; *In re Sherwood's Estate,* 122 Wash. 648; in *In re Estate of Hodges,* 170 Cal. 492; In *In re Estate of Zook* (Missouri Supreme Court, July, 1927), 296 S. W. 778; *Lines' Estate,* 155 Pa. 378; *Commonwealth* v. *Williams' Executor,* 102 Va. 778; *Hopkins' Appeal,* 77 Conn. 644.

This power of taxation has been upheld by this court.

In *Carpenter* v. *Pennsylvania,* 17 How. 456, a Pennsylvania inheritance tax imposed upon shares of stock in corporations not organized under the laws of Pennsylvania, the certificates being outside the State of Pennsylvania at the time of death, was sustained.

In *Keeney* v. *New York,* 222 U. S. 525, the power of New York to impose a tax upon the transfer of its citizens' shares of stock in the Prudential Insurance Company, a

New Jersey corporation, which shares were held in New Jersey upon a revocable trust at the time of death, was sustained.

In *Union Refrigerator Transit Co.* v. *Kentucky,* 199 U. S. 194, the court recognized that shares of stock were intangible property, and hence taxable at the domicile of the owner.

In *Bullen* v. *Wisconsin,* 240 U. S. 625, where the testator died owning shares of stock in corporations not organized under the law of Wisconsin, the certificates being in Illinois at the time of his death, this court sustained the inheritance tax imposed by the State of Wisconsin.

(e) *Savings Account with a New York Bank.*

Among the items of the decedent's property was the sum of $108.56 on deposit in a savings account in the National City Bank of New York. This obligation of the bank was simply a debt and as such is taxable at the domicile of the creditor. Such a tax has been sustained in *Mann* v. *Carter,* 74 N. H. 345; in *People* v. *Union Trust Co.,* 255 Ill. 168, and has been sustained in this court as to *ad valorem* taxes in *Fidelity & Columbia Trust Co.* v. *Louisville,* 245 U. S. 54, in which this court said (p. 58):

> "The present tax is a tax upon the person, as shown by the form of the suit, and is imposed, it may be presumed, for the general advantages of living within the jurisdiction. These advantages, if the State so chooses, may be measured more or less by references to the riches of the person taxed. Unless it is declared unlawful by authority we see nothing to hinder the State from taking a man's credit into account. But so far from being declared unlawful, it has been decided by this court that whether a State shall measure the contribution by the value

> of such credits and choses in action not exempted by superior authority, is the State's affair, not to be interfered with by the United States, and therefore that a State may tax a man for a debt due from a resident of another State."

See also *Kirtland* v. *Hotchkiss,* 100 U. S. 491.

In *Carpenter* v. *Pennsylvania, supra,* the State of Pennsylvania's power to tax money on deposit in New York was sustained, as it was in *Bullen* v. *Wisconsin, supra,* where the question was as to the power of Wisconsin to tax the transfer of a checking account in an Illinois Bank. Indeed, the only difference between *Bullen* v. *Wisconsin* and the present case is that in the Bullen case Illinois *also* taxed the fund, while in this case New York did not.

(f) *Life Insurance Policy.*

The decedent died having a policy in the Mutual Life Insurance Company of New York payable to his estate, appraised at the value of $14,820.11.

Certainly, a life insurance policy is but a written contract obligating the company upon certain contingencies to pay a sum of money. The policy of insurance is not a specialty. The obligation is a contract obligation and as such it falls within the category of intangibles. And the power of the domiciliary state to impose a tax upon it is sustained by *Kirtland* v. *Hotchkiss,* 100 U. S. 491, and *Fidelity & Columbia Trust Co.* v. *Louisville,* 245 U. S. 54.

The matter, however, has been conclusively determined by *Bullen* v. *Wisconsin, supra.* In that case, among the property upon which the Wisconsin transfer tax was imposed were three policies of insurance issued respectively by a New York, a Canadian and a Wisconsin corporation, held in Illinois at the time of death. The right to tax the property was upheld.

(g) *Corporate Bonds of a Connecticut corporation.*

The final item in dispute is the two bonds of a Connecticut corporation, the Hubbard Heights Golf Club, Inc., amounting, with interest, to $521.67, owned by the decedent.

Both the residence of the debtor and creditor were in Connecticut. The mere fact that the bonds were outside the State at time of death does not destroy Connecticut's power to impose a tax upon the succession to them. *Kirtland* v. *Hotchkiss, supra; Carpenter* v. *Pennsylvania, supra; Keeney* v. *New York, supra; Bullen* v. *Wisconsin, supra; Rhode Island Hospital Trust Co.* v. *Doughton, supra.*

This examination in detail of the specific items of property which were included in the computation of the Connecticut Succession Tax has been made to show that while the Connecticut Succession Tax is not imposed upon property but upon the privilege of succession, every item included in the computation was an item which the State of Connecticut had the power to tax.

THIRD: The imposition of the Connecticut succession tax upon this property is not a failure to give full faith and credit to the public acts, records and judicial proceedings of the State of New York.

The Executors further contend that the judgment of the Connecticut Court herein and the proceedings antecedent thereto constituted a failure to give full faith and credit to the public acts, records and proceedings of the State of New York in violation of the Constitution of the United States (R. 96). We are unable to fathom any such constitutional objection.

The jurisdiction of the Surrogate of New York County, New York, to issue letters testamentary was dependent, the decedent being a nonresident, upon the existence of property within the County. Surrogate's Court Act, Sec. 45. The petition for the granting of letters specifically stated that the decedent was a resident of Connecticut (R. 28). This recital in the letters testamentary that the decedent left property in the County of New York is in no sense an adjudication that the property here in question has an exclusive taxing *situs* in New York, nor was it so intended. And an adjudication to that effect would not, under familiar principles of law, be binding upon the State of Connecticut, which was not a party to the New York proceedings.

Likewise the general recital in the letters testamentary that

> "the granting administration of all and singular the goods, chattels and credits of said testator doth belong to us . . ."

is in no sense an adjudication that the State of Connecticut could not constitutionally grant letters of administration upon the estate of its citizen. In the first place, Connecticut was not a party to the proceedings. In the second place, it is well settled that in the granting of administration each state may for itself decide whether it has jurisdiction. And if a state finds that it has jurisdiction, it may issue letters testamentary without regard to whether or not letters have been issued by some other state. So to do violates neither the Constitution of the United States nor the settled principles of the common law. *Burbank* v. *Ernst,* 232 U. S. 162; *Overby* v. *Gordon,* 177 U. S. 214, 227; *Thormann* v. *Frame,* 176 U. S. 350; *Baker* v. *Baker, Eccles & Co.,* 242 U. S. 394, 404. In the third place, a comparison of the recital in the New York letters testamentary "the granting administration of all and singular the goods . . . doth belong to us" and Sec. 45 of the Surrogate's Court Act shows that the reference to "us" is to the County of New York, not to the State of New York.

In final analysis the assertion of the Executors resolves itself into a restatement of the contention that the property here in question was located in New York, was administered solely by New York courts and was subject to taxation only by New York.

This contention has been abundantly answered. The power of the state of domicile to impose a tax upon the succession to the property of its citizens cannot be defeated or diminished by the action of a sister state in granting letters testamentary. The power of the state of domicile to tax the succession to property of the nature here involved and similarly held at the time of death has been sustained by the repeated decisions of this court.

We respectfully submit that the computation of the succession tax due the State of Connecticut as computed by the Tax Commissioner of that state which involved an imposition of a tax upon the transfer of all the property herein involved was correct. We submit that so much of the judgment of the Superior Court of Fairfield County, Connecticut, which adjudged that the State of Connecticut had no power to impose a tax upon the succession to the United States Liberty Bonds, Treasury Certificates of Indebtedness and cash on hand was erroneous and should be reversed and that so much of the judgment of the Superior Court of Fairfield County as adjudged that the imposition of the succession tax upon the transfer of the interest in the partnership, the savings account in a New York bank, the shares of stock in foreign corporations, the United States Liberty Bonds, the certificates of which were within the State of New York at the time of the death, and the bonds of a Connecticut corporation, was correct and should be affirmed.

Respectfully submitted,

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Connecticut Succession and Transfer Tax Act.

PUBLIC ACTS OF 1923.

CHAPTER 190.

SECTION 1. All property and any interest therein owned by a resident of this state at the time of his decease, and all real estate within this state owned by a nonresident of this state at the time of his decease, which shall pass by will or inheritance under the laws of this state; and all gifts of such property by deed, grant or other conveyance, made in contemplation of the death of the grantor or donor, or intended to take effect in possession or enjoyment at or after the death of such grantor or donor, shall be subject to the tax herein prescribed. All property passing to or in trust for the benefit of any corporation or institution located in this state which receives state aid, or for the use of a municipal corporation for public purposes within this state, and all gifts of paintings, pictures, books, engravings, bronzes, curios, bric-a-brac, arms and armor and collections of articles of public interest, passing to any corporation or institution located in this state for preservation and free exhibition, and any gift to any association or corporation in trust for the perpetual care of cemetery plots to an amount not exceeding three hundred dollars, shall be exempt from such tax. The provisions of this act shall not apply to real estate situated without the state.

New York Transfer Tax Law.

Laws 1922, Ch. 430.

(In effect September 23, 1924.)

§220. TAXABLE TRANSFERS. A tax shall be and is hereby imposed upon the transfer of any property real or personal, or of any interest therein or income therefrom in trust or otherwise, to persons or corporations in the following cases, subject to the exemptions and limitations hereinafter prescribed:

1. When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed thereof while a resident of the state.

2. In the case of a nonresident decedent when the transfer is by will or intestate law of any of the following items:

(a) Real property within this state, or goods, wares and merchandise within this state.

(b) Shares of stock or certificates of interest of corporations organized under the laws of this state, or of national banking associations located in this state, or of joint stock companies or associations organized under the laws of this state and including all dividends and rights to subscribe to the stock of such corporations, joint stock companies or associations or banks.

(c) Property evidenced by or consisting of shares of stock of a foreign corporation, joint stock company or association, or bonds, notes, mortgages or other evidences of interest in any corporation, joint stock company or association wherever incorporated or organized where the property represented by such shares of stock, bonds, notes, mortgages or other evidences of interest, consists of real property which is located wholly, or partly, within this state

to the extent to which the value of the said items respectively is enhanced, or is represented, or is secured, by real estate in the State of New York owned by such corporation, joint stock company or association. There shall be excepted from the classification of this subdivision all of such items where such corporation, joint stock company or association is or is in the nature of a moneyed corporation, a railroad or transportation corporation, a public service or manufacturing corporation as defined or classified by the laws of this state.

(d) The interest of such decedent in any partnership business conducted, wholly or partly, within the State of New York to the extent of the interest of the decedent in the partnership property within this state and the good will of such business within this state.

(e) Capital invested in business within this state.

Nothing in this section shall be taken to include deposits in banks or trust companies or with persons or corporations acting as bankers, or to permit of a transfer tax by reason of keeping securities, other than those taxable under this article, within this state.

New York Partnership Law

Laws 1919, Ch. 408.

(In effect September 23, 1924.)

§50. Extent of Property Rights of a Partner. The property rights of a partner are (a) his rights in specific partnership property, (b) his interest in the partnership, and (c) his right to participate in the management.

§51. Nature of a Partner's Right in Specific Partnership Property. 1. A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

2. The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this chapter and to any agreement between the parties, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of the rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal

representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(c) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin.

§52. Nature of Partner's Interest in the Partnership. A partner's interest in the partnership is his share of the profits and surplus and the same is personal property.

§73. Rights of Retiring or Estate of Deceased Partner When the Business is Continued. When any partner retires or dies, and the business is continued under any of the conditions set forth in section seventy-two, subdivisions one, two, three, five and six, or section sixty-nine, paragraph (b) of subdivision two, without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnerships may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by section seventy-two, subdivision eight of this chapter.

Sections 98 and 107 of the Partnership Law were added by the Laws of 1922, ch. 640.

§98. Rights, Powers and Liabilities of a General Partner. (1) A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to

(a) Do any act in contravention of the certificate.

(b) Do any act which would make it impossible to carry on the ordinary business of the partnership.

(c) Confess a judgment against the partnership.

(d) Possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose.

(e) Admit a person as a general partner.

(f) Admit a person as a limited partner, unless the right so to do is given in the certificate.

(g) Continue the business with partnership property on the death, retirement or insanity of a general partner, unless the right so to do is given in the certificate.

§107. Nature of Interest in Partnership. A limited partner's interest in the partnership is personal property.